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SUBJECT: TURKEY: MOJ SAYS COURT ERRED IN FIRST ARTICLE 301  
CONVICTION FOR INSULTING TURKISHNESS

REF: ANKARA 833

11. (U) Summary and comment: In the first high-profile verdict to be handed down since parliament amended controversial Penal Code Article 301 (insulting "Turkishness"), an Istanbul court sentenced Armenian-British publisher Ragip Zarakolu to pay a fine of 1400 YTL (USD 1100), for publishing a book discussing the 1915 mass-killing of Armenians. Zarakolu vowed to appeal. A senior Justice Ministry official disagreed with Turkish and international press commentary that the result demonstrates recent amendments to Article 301 would be ineffective. He told us the court erred by not complying with the amended law's mandate to have all prosecutions (new and active) authorized by the MOJ; he predicted higher courts would reverse the Zarakolu decision. End summary and comment.

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Publisher Convicted Under Article 301  
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12. (U) Istanbul prosecutors initiated the case against Zarakolu four years ago under TPC Article 159 -- Article 301's precursor -- for publishing the Turkish translation of Armenian-British writer George Jerjian's "The Truth Will Set Us Free," a story of the writer's family in 1915, and how a Turkish soldier protected his grandmother from the Armenian massacres. The court suspended the case numerous times, most recently in early 2008 while Parliament debated Article 301 reforms passed on April 30 (reftel). The court sentenced Zarakolu June 17 to five months' imprisonment, but commuted his sentence to a 1400 YTL judicial fine (USD 1100).

13. (U) After the decision, Zarakolu said such rulings had silenced many writers in Turkey but he would continue to challenge the restrictions. "I was partly expecting this result. But it is a struggle for the truth and it will go on. I do not consider myself convicted. This is a conviction for official history and for denial," he said.

14. (U) In reporting the result, most media interpreted the court's decision as evidence the amended Article 301 would be ineffective. The news coverage asserted that revising Article 301 from insulting "Turkishness" to the "Turkish state" had no impact on the court's decision. Media also noted the court did not abide by Article 301's new requirement that all cases be sent to the MOJ for review and authorization to prosecute.

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MOJ Disagrees With Court's Interpretation  
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15. (SBU) Ministry of Justice DG Aykut Kilic told us the court inaccurately concluded it did not need to send the case to the MOJ because MOJ reviewed the file when the case was opened under Article 159. Amended Article 301 requires courts to send both pending and newly filed cases to the MOJ for review and authorization to prosecute, a requirement Kilic noted that will increase the workload of the ministry's Penal Department. (Note: There were over 1,500 Article 301 cases opened in 2006, according to MOJ statistics.) He insisted the department is sufficiently equipped to handle the task, having performed the same duty under Article 159. Kilic cautioned us to watch for higher-court rulings on the Zarakolu case, which he predicted would overturn the ruling and require the court to submit the case to the MOJ for review.

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